

1 Honorable Ronald B. Leighton
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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DIVISION OF WASHINGTON**
8 **AT TACOMA**

9 SARA ROREBECK,

10 Plaintiff,

11 vs.

12 FRANCISCAN HEALTH SYSTEM, ST.
13 JOSEPH MEDICAL CENTER, ABC CORP.
14 AND XYZ CORP., (fictitious names whose
15 identities are presently unknown), KAREN
16 COOK, individually, officially and on behalf
17 of her marital community with MARK
COOK, MARCIE DOYLE, individually,
officially and on behalf of her marital
community with MARTY DOYLE, LISA
MELCHIORRE, individually, officially and
on behalf of her marital community with
JOHN DOE MELCHIORRE; John Doe 1-5
and Jane Doe 1-5 (fictitious individuals whose
identities are presently unknown),

18 Defendants.

19 No. 3:18-cv-05423

20 **PLAINTIFF'S FIRST AMENDED
21 COMPLAINT FOR DAMAGES**

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1. VIOLATION OF AMERICANS WITH
DISABILITIES ACT (ADA), 42 U.S.C.
§§ 12101, 12131, *et seq.*
 - a) HARASSMENT
 - b) DISCRIMINATION
 - c) RETALIATION
 - d) FAILURE TO MAKE
REASONABLE
ACCOMMODATIONS
 - e) IMPROPER DISCLOSURE
 - f) WRONGFUL TERMINATION
2. RETALIATION for Opposing Unlawful
Practice Under HIPAA, 45 C.F.R. § 160,
RCW 49.60 *et. seq.* and RCW 48.43 *et
seq.*
3. VIOLATIONS OF RCW 49.60 *et seq.*
Against All Defendants Based on
Disability, Hostile Work Environment,
Failure to Make Reasonable
Accommodations and/or Retaliation
4. BREACH OF CONTRACT and Good
Faith and Fair Dealing or Third Party
Contract Against All Entity Defendants

5. DEFAMATION

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, by and through her attorneys of record, Beverly Grant, Jeffery Bradley and Elizabeth Lunde of Beverly Grant Law Firm, P.S., alleges as follows and submits the following Complaint for Damages.

I. PARTIES

1.1 Plaintiff, Sara Rorebeck, at all times material hereto, was above the age of majority, a resident of Pierce County, Washington and an employee of Franciscan Health System and/or St. Joseph Medical Center.

1.2 Defendant Franciscan Health System, at all times material hereto, is a company that has continuously been doing business providing health care in the State of Washington and has continuously had at least fifteen (15) employees.

1.3 Defendant St. Joseph Medical Center, at all times material hereto, is a company that has continuously been doing business providing health care in the State of Washington and has continuously had at least fifteen (15) employees.

1.4 Defendants Franciscan Health System and St. Joseph Medical Center have continuously been employers engaged in an industry affecting commerce for the purposes of the relevant causes of action alleged herein

1.5 Defendant, Karen Cook (hereinafter “Defendant Cook”), at all times material hereto, was a resident of Pierce County, Washington and is/was employed by Defendants, Franciscan Health System and/or St. Joseph Medical Center. All acts performed by Karen Cook were performed on behalf of Defendants Franciscan Health System and/or St. Joseph

1 Medical Center in her individual and official capacities and on behalf of her marital
2 community with Mark Cook.

3 1.6 Defendant Marcie Doyle (hereinafter “Defendant Doyle”), at all times material
4 hereto, was a resident of Pierce County, Washington and is/was employed by Defendants,
5 Franciscan Health System and/or St. Joseph Medical Center. All acts performed by Marcie
6 Doyle were performed on behalf of Defendants Franciscan Health System and/or St. Joseph
7 Medical Center in her individual and official capacities and on behalf of her marital
8 community with Marty Doyle.

9 1.7 Defendant Lisa Melchiorre (hereinafter “Defendant Melchiorre”), at all times
10 material hereto, was and a resident Pierce County, Washington and is/was employed by
11 Defendants, Franciscan Health System and/or St. Joseph Medical Center. All acts performed
12 by Lisa Melchiorre were performed on behalf of Defendants Franciscan Health System and/or
13 St. Joseph Medical Center in her individual and official capacities and on behalf of her marital
14 community with Jane or John Doe Melchiorre.

15 1.8 Defendants John Does 1 – 5, at all times material hereto, are individuals
16 unknown at this time. All acts performed by John Does 1 - 5 were performed on behalf of
17 Defendants Franciscan Health System, and/or St. Joseph Medical in their individual, marital
18 and official capacities. Plaintiff reserves the right to amend her Complaint to add additional
19 parties should it become necessary.

20 1.9 Defendants ABC CORP. and XYZ CORP., at all times material hereto, are
21 corporations unknown at this time. All acts performed by ABC CORP. and XYZ CORP.
22 were performed on behalf of Defendants Franciscan Health System and/or St. Joseph Medical

1 Center. Plaintiff reserves the right to amend her Complaint to identify and/or add additional
2 parties should it become necessary.

3 1.10 Upon information and belief, any additional persons who engaged in tortious
4 actions against Plaintiff will be identified and joined later in this lawsuit.

II. JURISDICTION AND VENUE

6 2.1 Jurisdiction is proper in the United States District Court pursuant to 42 U.S.C.
7 §§12101, 12131, *et seq.*, 45 C.F.R. §160 *et seq.* and venue is proper in that the Defendants
8 Franciscan Health System and/or St. Joseph Medical Center conduct business in Pierce
9 County, which is located in the Western District of Washington at Tacoma.

10 2.2 This court has subject matter jurisdiction over the facts alleged herein as well
11 as pendent jurisdiction pursuant to RCW 49.60 *et seq.* and RCW 48.43 *et seq.* as Defendants
12 Franciscan Health System and/or St. Joseph Medical Center conduct business in Pierce
13 County, which is located in the Western District of Washington at Seattle.

Administrative Exhaustion of Remedies

15 2.3 Pursuant to RCW 4.92.100, Plaintiff filed her Tort Claim for Damages on
16 January 25, 2018. Acknowledgement by the Defendants for said Tort Claim was received on
17 May 11, 2017, respectively.

18 2.4 More than sixty (60) days have elapsed since Plaintiff's claims were presented,
19 as required by RCW 4.92.110 and Plaintiff now brings this lawsuit.

III. NATURE OF THE CASE

21 3.1 This is an action brought under (1) Title I of the Americans with Disabilities
22 Act Amendments (ADA), 42 U.S.C. §§ 12101, 12131 *et seq.*; (2) Retaliation for Opposing an

1 unlawful practice under HIPAA, 45 C.F.R. § 160, et seq., RCW 49.60 et. seq. and RCW
2 48.43 et seq.; (3) Violations of RCW 49.60 *et seq.* Against All Defendants Based on
3 Disability, Hostile Work Environment, Failure to Make Reasonable Accommodations and/or
4 Retaliation; (4) Violation of the ADEA 29 U.S.C. § 621 *et seq.*; and/or RCW 49.60 *et seq.*; (5)
5 Breach of implied contract and Good Faith and Fair Dealing or Third Party Contract; and (6)
6 Defamation. As a result of Defendants' unlawful behavior, Plaintiff has suffered damages in
7 amounts to be proven at trial.

8 **IV. CAUSES OF ACTION**

9 **1. VIOLATION OF AMERICANS WITH DISABILITIES ACT** 10 **(ADA), 42 U.S.C. §§ 12101, 12131, *et seq.***

11 Plaintiff adopts the preceding paragraphs by reference as though fully alleged and
12 further states the following facts:

13 4.1 Plaintiff was employed as a Relief Charge Nurse in the Medical Surgical
14 Department from July 2001 through 2012. Later she became a Relief Charge Nurse in the
15 Preoperative Surgical Department until Defendants fired her on February 16, 2016.

16 4.2 Plaintiff suffered from a disability and at all times relevant hereto, Defendants
17 were aware that Plaintiff suffered from numerous medical issues that required reasonable
18 accommodations.

19 4.3 Plaintiff requested reasonable accommodations from Defendants and
20 Defendants refused to accommodate Plaintiff's medical conditions.

21 4.4 Despite Plaintiff's medical conditions, Plaintiff was able to perform all
22 essential job functions for Defendants.

1 4.5 Defendants refused to review Plaintiff's medical records brought to them by
2 Plaintiff, which supported Plaintiff's request for medical accommodations as a result of her
3 debilitating back injuries and surgeries. In spite of this disclosure, Defendants dismissed
4 Plaintiff's medical concerns.

5 4.6 Defendants made derogatory comments about Plaintiff's medical conditions,
6 joked about them and laughed at Plaintiff.

7 4.7 From 2001 until 2014, Plaintiff received exemplary job performance
8 evaluations from her current and previous managers. While employed by Defendants for over
9 ten (10) years, Plaintiff maintained her medical surgical certification, which demonstrates
10 Plaintiff's expertise in that field.

11 4.8 Plaintiff worked under the supervision of Defendant Cook where she received
12 two (2) highly commendable job performance evaluations in 2013 and 2014.

13 4.9 Plaintiff also received multiple commendations from co-workers and patients,
14 including being nominated for the Daisy Award¹. Plaintiff was previously selected to work
15 with the medical director and ancillary staff on a discharge improvement project that was used
16 hospital-wide.

17 4.10 After Defendants had harassed and discriminated against Plaintiff, she filed
18 lawful complaints and her employment was ultimately terminated.

19 4.11 Plaintiff suffered damages as a result of Defendants' violations of the ADA in
20 amounts to be proven at trial.

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¹ The Daisy Award is given to an employee for serving as an outstanding role model for the nursing profession.

1 **2. RETALIATION FOR OPPOSING UNLAWFUL PRACTICE**
2 **UNDER HIPAA, 45 C.F.R. § 160, RCW 49.60 et. seq. and RCW**
3 **48.43 et seq.**

4 Plaintiff adopts the preceding paragraphs by reference as though fully alleged and
5 further states the following facts:

6 4.12 Plaintiff overheard her manager, Defendant Cook, disclosing a co-worker's
7 ("J. Doe") protected health information to Defendant Cook's subordinates, who at all times
8 relevant hereto, were employees of Defendants Franciscan Health System and/or St. Joseph
9 Medical Center.

10 4.13 Under the policies of Defendants Franciscan Health System and/or St. Joseph
11 Medical Center, employees are not allowed to disclose anyone's protected medical
12 information. Under policies of Defendants Franciscan Health System and/or St. Joseph
13 Medical Center, employees are to report violations of the unlawful disclosure of protected
14 medical information to Human Resources.

15 4.14 J. Doe asked Plaintiff how she knew about her medical information, which was
16 confidential since she had only told the Charge Nurse.

17 4.15 Plaintiff had a good faith belief that Defendant Cook's actions were unlawful,
18 in violation of HIPAA and in violation of the policies and procedures of Defendants
19 Franciscan Health System and/or St. Joseph Medical Center.

20 4.16 Plaintiff reported Defendant Cook's violation to Human Resources, as required
21 by the policies and procedures of Defendants Franciscan Health System and/or St. Joseph
22 Medical Center. Plaintiff believed this manner of opposition was reasonable and would not
involve further unlawful disclosure of J. Doe's protected health information.

1 4.17 On or about July 22, 2015, Plaintiff emailed the Human Resources employee
2 of Defendants Franciscan Health System and/or St. Joseph Medical Center, Chyrran Slama to
3 inform how she had overhead Defendant Cook talking about J. Doe's protected medical
4 information with her subordinates, which violated policies of Defendants Franciscan Health
5 System and/or St. Joseph Medical Center and HIPAA.

6 4.18 Ms. Slama pressed Plaintiff for additional details about who Plaintiff was
7 referred to and what was J. Does' protected medical information. Plaintiff was under the
8 impression that the meeting with Ms. Slama was confidential.

9 4.19 Later that week, Defendant Doyle informed Plaintiff that she was aware
10 Plaintiff reported Defendant Cook's violations and stated, "We don't know what we can talk
11 about around here."

12 4.20 Plaintiff was shocked that Defendant Doyle knew about J. Doe's protected
13 medical information and about Plaintiff's opposition to Defendant Cook's policy and HIPAA
14 violations.

15 4.21 The following week, Plaintiff called in to confirm her shift, but no one was
16 available to provide the information to Plaintiff. She called numerous times, but was forced
17 to leave a voicemail.

18 4.22 On July 31, 2015, Defendant Cook summoned Plaintiff to her office and issued
19 Plaintiff a written reprimand for not following the call-in policy, although Plaintiff had tried
20 to call in and left a voicemail. Plaintiff attempted to show the text message she had sent to the
21 charge nurse for that day, informing Defendant Cook that she had tried to call in and could
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1 not reach anyone, so Plaintiff had no choice but to leave a message. Defendant Cook refused
2 to look at the text message and insisted on accusing Plaintiff of lying.

3 4.23 Defendants' other employees also had problems reaching someone to call in, but
4 they were not disciplined. Defendants retaliated against Plaintiff for her lawful opposition to a
5 violation of company policy, HIPAA rules and Washington Law pursuant to RCW 49.60 *et. seq.*
6 and RCW 48.43 *et seq.*

7 4.24 On August 1, 2015, Plaintiff informed Ms. Slama that she was being targeted
8 unfairly and that it was not coincidental that Defendant Cook had written her up shortly after
9 reporting the Defendants' own policy violation.

10 4.25 Plaintiff expressed concern to her Director, Defendant Melchiorre about
11 Defendant Cook retaliating against her for reporting Defendant Cook's policy violations to
12 Human Resources.

13 4.26 Plaintiff questioned whether she should file a grievance because the work
14 environment was becoming hostile and it was becoming harder for Plaintiff to perform her job
15 duties as Defendants' employee. Plaintiff began experiencing emotional and physical harm
16 due to this hostile work environment.

17 4.27 HR representative Ms. Slama stated on August 17, 2015 in a memo to Plaintiff
18 that, "I also want to remind you that employees who raise concerns of this nature are
19 protected from reprisal for reporting concerns."

20 4.28 However, after Plaintiff reported the policy and HIPAA violations, until the
21 date of her termination on February 16, 2016, Defendants continued to harass, micromanage,
22 and make false and defamatory accusations against Plaintiff in violation to HIPAA and RCW

1 49.60 *et. seq.* and RCW 48.43 *et seq.* Ultimately, Plaintiff's employment was terminated
2 following her lawful complaints.

3 **3. VIOLATIONS OF RCW 49.60 *et seq.* Against All Defendants
4 Based on Disability, Hostile Work Environment, Failure to
5 Make Reasonable Accommodations and/or Retaliation**

6 Plaintiff adopts the preceding paragraphs by reference as though fully alleged, especially
7 with reference to Plaintiff's Cause of Action No. 1, Violation of Americans with Disabilities
8 Act (ADA), 42 U.S.C. §§12101, 12131, *et seq.* and further states the following facts:

9 4.29 Defendants have discrimination against Plaintiff, created a hostile working
10 environment for Plaintiff, failed to make reasonable accommodations for Plaintiff and
11 retaliated against Plaintiff based on Plaintiff's known disabilities.

12 4.30 After Plaintiff made her lawful complaints to Human Resources about
13 Defendants' harassment, she was terminated. Plaintiff's disabilities and lawful complaints
14 about the mistreatment were substantial factors in Defendants' decision to take the adverse
15 actions against Plaintiff.

16 4.31 Defendants imposed job requirements and restrictions onto Plaintiff that had a
17 disparate impact on individuals with disabilities and those requirements and restrictions were
18 not adequately justified.

19 4.32 Plaintiff suffered damages from Defendants' violations in an amount to be
20 proven at trial.

21 **4. BREACH OF CONTRACT and Good Faith and Fair Dealing
22 or Third Party Contract Against All Entity Defendants**

23 Plaintiff adopts the preceding paragraphs by reference as though fully alleged and
24 further states the following facts:

1 4.33 Plaintiff was a member of the Washington State Nurses Association.

2 4.34 Defendants continued progressively nitpicking Plaintiff's absences. For
3 instance, in 2015 Plaintiff's brother was reported as missing. Plaintiff was working at the
4 time she received a telephone call from her mother to inform Plaintiff about her brother.

5 4.35 Defendants claimed Plaintiff was taking too long for her breaks, failed to
6 exercise progressive discipline and failed to abide by Defendants' policies.

7 4.36 Plaintiff was refused accommodations under the Family and Medical Leave
8 Act (FMLA) when she had called in to work to report her son was sick. Defendants failed to
9 cover Plaintiff's time loss under FMLA.

10 4.37 Defendant entities did not treat similarly situated employees working to similar
11 contract requirements in the same manner.

12 4.38 Defendants' entities actions were unfair and breached their duty to treat
13 Plaintiff and her work contract in good faith and fair dealing.

14 4.39 Defendants' entities, by breaching their duty of good faith and fair dealings,
15 caused Plaintiff damages in an amount to be proven at trial.

16 **5. DEFAMATION**

17 Plaintiff adopts the preceding paragraphs by reference as though fully alleged and
18 further states the following facts:

19 4.40 Defendants placed several statements into Plaintiff's personnel file that were
20 untruthful and defamatory relating to her work.

21 4.41 Plaintiff was unaware that defamatory statements as to her character were
22 made until August 2016 when Plaintiff was pursuing a grievance with the union.

4.28 Defendants knew or recklessly disregarded that these statements were false and
were highly offensive.

3 4.29 These statements were made for the sole purpose of damaging Plaintiff's
4 reputation and/or placing her in a false light, causing her mental suffering.

5 4.30 These statements have made it difficult for Plaintiff to find work and have
6 otherwise damaged her in an amount to be proven at trial.

VI. RELIEF REQUESTED

8 a) Past and future special damages as proven at trial, including interest on all
9 liquidated damages;
10 b) Past and future general damages as proven at trial;
11 c) Punitive damages, where allowed by law;
12 d) Damages allowed under all applicable laws;
13 e) Injunctive and equitable relief;
14 f) Reasonable attorney fees and costs, including expenses of litigation, filing fees,
15 service of process, and/or prejudgment interest.
16 g) Such other relief as the Court deems proper.

DATED this 23rd day of October 2018.

18 Beverly Grant Law Firm, P.S.

19 By: *1st Beverly Grant*
20 Beverly Grant, WSBA No. 8034
Attorney for Plaintiff

By: /s/ Elizabeth Lunde
Elizabeth Lunde, WSBA No. 51565
Attorney for Plaintiff

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By: /s/ Jeffery D. Bradley
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